U.S. VIRGIN ISLANDS WAIVER PETITION AND SUPPLEMENTS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of Federal-State Joint Board on Universal Service Centennial U. S. V. I. Operations Corp. Petition for Waiver of Section 54.314(d)(1) of the Commission's Rules	CC Docket No. 96 - 45

WAIVER – EXPEDITED ACTION REQUESTED

CENTENNIAL USVI OPERATIONS CORP.
PETITION FOR WAIVER OF SECTION 54.314(D) OF
THE COMMISSION'S RULE

Centennial USVI Operations Corp. ("Centennial"), pursuant to Sections 1.3 and 1.925 of the Commission's rules,[1] respectfully petitions the Commission for an expedited waiver of the July1, 2006 filing deadline set forth in Section 54.314(d)(1) of the Commission's rules. Approval of this waiver request will allow Centennial to receive universal service support in the United States Virgin Islands ("USVI") beginning as of December 2, 2006, the effective date of the decision of the USVI Public Services Commission ("VIPSC") designating Centennial as an Eligible Telecommunications Carrier ("ETC").[2]

The USVI presents several unique challenges in the provision of telecommunications services. First, although the territory constitutes a single study area, it consists of three main islands, with the two most populous – St. Thomas and St. John – separated by more than 40 miles of open ocean. Second, much of the territory – particularly on St.

[1] *See* 47 C.F.R. § 1.3; § 1.925. Pursuant to § 1.1105 of the rules, no filing fee applies to this request.
[2] *In re ETC Petition – Centennial USVI Operations Corp. Pursuant to Act No. 6977,* PSC Docket No. 574 (effective as of December 2, 2006; issued February .

Thomas and St. John – is mountainous and undeveloped. Moreover, in economic terms, the population of the USVI is challenging to serve as well, with a per-capita annual income only about half that in the mainland United States.

Centennial has been designated a ETC for the USVI, and now requires immediate access to universal service funding in order to begin a prompt build out of its wireless network in the unserved and underserved areas of the USVI. Because of the USVI's mountainous terrain, many valleys and communities – including resorts and other businesses – lack wireless coverage. In addition, the incumbent local exchange carrier ("ILEC") is currently struggling from the effects of its former owner's financial misdeeds, which have strained the ILECs ability to make capital improvements to its network.[3] With the ILEC's financial status unstable, and no competing carrier currently receiving universal service funding support, the state of telecommunications service in the USVI is unsatisfactory and detrimental to the territory's well being.

Because of the USVI's challenging geography and demographics, it is economically unviable for Centennial to attempt an expansion of its USVI network in the absence of universal service funding. In light of the factors noted above and Centennial's commitment to extend service to areas insufficiently served, each day that Centennial is delayed in receiving its authorized funding results in a day-for-day delay in Centennial's efforts to provide effective and reliable service to the people of the Virgin Islands. For

[3] The ILEC is the Virgin Islands Telephone Company, or Vitelco, now known as "Innovative." Vitelco's parent company, as well as its owner/controlling person, Jeffrey Prosser, are in bankruptcy following a failure to pay hundreds of millions of dollars of rural development loans. This situation is, to Centennial's knowledge, entirely unique within the universe of incumbent carriers who receive universal service funding. *See* http://www.onepaper.com/stthomasvi/?v=d&i=&s=News:Local&p=1203139294; http://www.virginislandsdailynews.com/index.pl/article_home?id=17621123.

this reason, Centennial respectfully, but urgently, asks that this request be granted on an expedited basis, as soon as possible.

BACKGROUND

Centennial began seeking ETC status in the USVI in late 2004 or early 2005. At that time, Centennial was informally advised that the VIPSC did not have a mechanism for assessing Centennial for the costs of evaluating Centennial's fitness to be designated as an ETC, and, therefore, was not in a position to conduct such an evaluation.[4] As a result, Centennial asked for a letter stating that the VIPSC would not perform such an evaluation. It received a letter from a VIPSC representative stating that the VIPSC did not have jurisdiction over Centennial.

Based on the letter just noted, Centennial filed a petition with this Commission to be designated as an ETC for the USVI. This Commission never made any decision with respect to this petition. On February 12, 2008, Centennial filed a letter with this Commission withdrawing it.

As a result of the long pendency of Centennial's petition here, Centennial approached the VIPSC to determine what steps, if any, could be taken for the VIPSC, rather than this Commission, to act on Centennial's ETC petition. Specifically, during the second half of 2006, Centennial's representatives discussed with VIPSC representatives a proposal under which Centennial would voluntarily agree to submit to the VIPSC's jurisdiction (including, specifically, jurisdiction to be assessed the reasonable costs of con-

[4] The VIPSC is funded by means of general assessments on public utilities in the USVI, as well as by "docket-specific" assessments on entities with specific matters before that body. Moreover, because the VIPSC is comprised of part-time Commissioners, much of its actual work is handled by outside consultants and contractors – who must be paid for the work that they do. As a result, if the VIPSC cannot collect funds from an entity in a matter before it, in practical terms that matter cannot proceed.

ducting a review of the ETC petition and subsequent annual reviews). As a result of those meetings, and in response to directions from the then Chairman of the VIPSC, Centennial submitted a petition to be designated an ETC by the VIPSC to its representative on December 2, 2006 – more than 18 months after Centennial's original petition filed with this Commission. At that time, and based on discussions with VIPSC representatives, Centennial anticipated that its petition would be granted promptly.

For various reasons, however, that application remained pending. On several occasions, including December 15, 2006, March 23, 2007, April 23, 2007, and November 2007, Centennial's petition was listed for consideration on the VIPSC's agenda, and, although it was discussed at those meetings, it was not acted upon. In addition, in August 2007, representatives of the VIPSC testified before the Senate of the Virgin Islands Legislature that Centennial's petition was complete and would be voted on in the near future.

The VIPSC's jurisdiction extends to all intrastate "telephone service," which, in Centennial's view, encompassed such authority over wireless carriers as had not been removed from states under 47 U.S.C. § 332(c). However, because some doubt had been expressed about the VIPSC's ability to designate an ETC, the USVI Legislature, on December 6, 2007, passed Bill No. 27-0099, which contained new Section 47 of Chapter 30 of the Virgin Islands Code. This bill, which the governor signed on December 22, 2007, confirmed the VIPSC's authority to designate ETCs. Thereafter, the VIPSC held public hearings on Centennial's petition, and voted, on February 22, 2008, to designate Centennial an ETC in the USVI.

Given the specific circumstances surrounding the timing of its action – including the fact that Centennial had, by the time of the hearings, been seeking ETC designation in one forum or another for three years – the VIPSC specifically addressed the question of an appropriate effective date for Centennial's ETC designation. Based on the evidence and arguments submitted to its Hearing Examiner, the VIPSC found and expressly ruled that the effective date of Centennial's eligibility to receive high-cost universal service support pursuant to Section 54.307 of the Commission's rules (which provides for support to competitive ETCs)[5] was December 2, 2006, the date on which Centennial submitted its petition to the VIPSC. The VIPSC, in other words, properly took steps to ensure that after proceedings that began more than 18 months after Centennial's initial ETC petition to this Commission, and that took more than a year to complete (for reasons completely unrelated to the substantive merits of the petition),[6] neither Centennial nor the citizens of the USVI would or should be deprived of appropriate high-cost universal service support arising from the USVI Legislature's last minute changes to, and clarification of, the VIPSC's regulatory powers, particularly when these changes and clarifications did not affect Centennial's actual qualification to receive support.

Section 54.314 of the Commission's rules sets forth the requirements for the state certification of rural carriers. States that desire universal service high-cost support for rural ETCs must file an annual certification by October 1 with the Universal Service Administrative Company ("USAC") and this Commission, stating that all high-cost support received by rural ETCs within the state will be used "only for the provision, maintenance,

[5] *See* 47 C. F. R § 54.307

[6] In fact, counting the FCC's inaction on Centennial's petition, the delay in improving the USVI's telecommunications infrastructure was almost three years.

and upgrading of facilities and services for which support is intended" (hereinafter referred to as a "Section 54.314 Certification"). Section 54.314 establishes a quarterly filing timetable that determines when an ETC may begin receiving support during the calendar year.[7] Universal service support will be provided to an ETC in a state only to the extent the state has filed the requisite certification.

On February 26, 2008, the VIPSC filed a Section 54.314 Certification with this Commission and USAC certifying Centennial as eligible to receive federal universal service funds beginning December 2, 2006.[8] However, because of the filing deadlines set out in Section 54.314(d) of the Commission's rules, Centennial will be denied universal service support until the third quarter of 2008 unless the Commission grants this waiver request.

As set out below, a waiver of the July 1, 2006 filing deadline will allow Centennial to receive universal service support beginning as of the effective date of its ETC designation for the USVI. Such action would be consistent with Commission precedent, consistent with the Commission's well established competitively neutral universal service policy, and would serve the public interest.

REQUEST FOR WAIVER

[7] Pursuant to Section 54.314(d), a state's certification must be filed by October 1 of the preceding calendar year for the eligible carriers to receive support beginning in the first quarter of the subsequent calendar year. If the October deadline is missed, the certification must be filed by January 1 for support to begin by the second quarter, by April 1 for support to begin in the third quarter and by July 1 for support to begin in the fourth quarter.

[8]

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

(i) The underlying purpose of the rule(s) would not served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[9]

Federal courts also have recognized that "a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest."[10] Accordingly, the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."[11]

The Commission established the quarterly Section 54.314 Certification filing timetable to facilitate USAC's ability to report universal service support projections to the FCC. The timetable in Section 54.314 was not intended to create a process that disadvantages carriers receiving ETC designation subsequent to one of the quarterly filing certification deadlines, and was not intended to interfere with state commission's substantive determination of the appropriate effective date of an ETC designation. The July 1, 2006 filing deadline fell four months prior to the December 2, 2006 effective date of Centennial's ETC designation by the VIPSC. In these circumstances, it is clear that the VIPSC could not have met, under any circumstances, the normal deadline for Centennial

[9] *See* 47 C. F. R. §1.925(h)(3).
[10] *Northwest Cellular Telephone Co. v. FCC,* 897 F. 2d. 1164. 1166 (D C. Cir. 1990); *see also WAIT Radio v. FCC,* 418 F. 2d 1153, 1157 (D.C. Cir 1969), *cert. denied,* 409 U.S. 1027 (1972).
[11] *Northeast Cellular Telephone Co.,* 897 F. 2d at 1166 (citing *WAIT Radio,* 418 F. 2d at 1159).

to receive support beginning at the end of 2006. Receipt of such support is, however, explicitly intended by the VIPSC as its order and effective date make clear.[12]

The Commission has previously concluded that strict application of the Section 54.314 Certification filing timetable is inconsistent with the public interest and undermines the Commission's goals of competitive neutrality when a carrier is denied universal service support it is otherwise entitled to receive. In granting similar waiver requests to competitive ETCs, the Commission has acknowledged that strict application of the certification filing timetable set forth in Section 54.314(d) may have the effect of penalizing newly designated ETCs. For that reason, the Commission has determined that it would be "onerous" to require an ETC to forego universal service support solely because it was designated as an ETC after a certification deadline.[13]

In this case, it would be especially onerous to deny the people of the Virgin Islands and Centennial receipt of universal service funding as of December 2, 2006, the effective date established by the VIPSC, simply because that date occurred after the July 1, 2006 filing deadline.[14] Centennial's circumstances are generally similar to the circumstances of several competitive ETCs that have been granted waiver of the filing deadlines set out in Section 54.314.[15] Denying support to Centennial, a competitive ETC,

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[12] Centennial does not seek USF payments for the period October 1 to December 31, 2006. It simply seeks to receive payments beginning with the effective date of its ETC designation.

[13] RFB Cellular, Inc. Petition for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations, Order, 17 FCC Rcd 24387, para. 6 ("RFB Waiver Order"); Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, DA 03-1169 (rel. April 17, 2003)("Guam Waiver Order"); Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, DA 03-2364 (rel. July 18, 2003)("Western Wireless Order").

[14] *See* Western Wireless Order, para. 7.

[15] *See* RFB Waiver Order, Guam Cellular Order, Western Wireless Order.

based upon the timing of its ETC designation would undermine the Commission's goals of competitive neutrality.

Moreover, the Section 54.314 Certification filing timetable has the unintended consequence with respect to Centennial in the Virgin Islands of delaying universal support well beyond the effective date of its designation. As noted earlier, there is a compelling need for telecommunications investment in the Virgin Islands. The ILEC finds itself in serious financial distress and is unable to fund needed capital projects because of the misdeeds of its former owner. The difficult terrain of the territory has resulted in significant parts of the public infrastructure – such as airports, marine terminals, hotels and small communities – suffering inadequate and unreliable wireless service. The nearly three-year delay in the consideration of Centennial's ETC application[16] should not penalize the people of the Virgin Islands whose need for improved telecommunications infrastructure is evident and urgent.

For all these reasons, granting a waiver of the filing deadline set forth in Section 54.314(d) of the rules, which will allow Centennial to receive universal service support beginning on December 2, 2006, the effective date of the VIPSC's designation of Centennial as an ETC, is appropriate and consistent with Commission precedent, consistent with the Commission's statutory goal of preserving and advancing universal service, and is in the public interest.

[16] Centennial filed its original application the FCC on April 28, 2005. At the time it was withdrawn on February 8, 2008, the FCC had taken no action on it. Centennial filed a petition for designation with the VIPSC on December 2, 2006. Uncertain of its jurisdiction, the VIPSC did not approve the petition until it had clarified its authority. The petition was approved on February 26, 2008.

REQUEST FOR EXPEDITED TREATMENT

Centennial urgently requests expedited treatment of this waiver request. The Virgin Islands and Centennial should not be deprived of substantial universal service support as a result of the unintended timing problem created by the filing deadlines of Section 54.314(d). Denying Centennial support for 2007 under these circumstances is contrary to the statutory goal of promoting the availability of universal service to consumers in high-cost and rural areas.

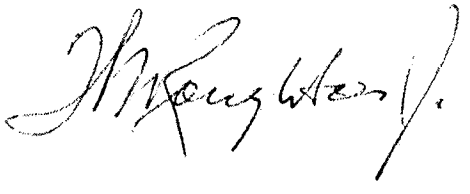
Indeed, the impact of the Commission's non-substantive, administrative rules is particularly harsh given the serious state of telecommunications infrastructure in the United States Virgin Islands. In connection with its ETC designation, Centennial has made commitments to extend its wireless network to poorly served and unserved areas even though, in normal economic terms, there is no reason to do so given the high cost of these projects that will serve relatively small populations. Only the receipt of universal service funds makes it viable for Centennial to undertake these improvements to extend its network. As a result, this is not a situation in which receipt of USF support will merely defray the high costs of an existing level of service, valuable as that function may be in many cases. Instead, this is a situation in which reliable telephone service is dependent upon the receipt of USF funding. In these circumstances, not only is a waiver of the Commission's rules fully justified, it is also critically important that the waiver be granted on an expedited basis so that Centennial may immediately begin the planning and implementation of the required network expansion.

CONCLUSION

For the reasons stated herein, Centennial respectfully requests, pursuant to Sections 1.3 and 1.925 of the FCC's rules, a waiver of Section 54.314(d) of the Commission's rules. In light of the unique factual setting of this request – specifically, Centennial's commitment to extend wireless service to those parts of the Virgin Islands infrastructure currently lacking adequate wireless service – Centennial also seeks expedited consideration of its waiver request.

Respectfully submitted,

Centennial USVI Operations Corp.



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February 28, 2008

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William L. Roughton, Jr.

Vice President
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March 6, 2008

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: In the Matter of Federal-State Joint Board on Universal Service - Centennial U. S. V. I. Operations Corp. Petition for Waiver of Section 54.314(d)(1) of the Commission's Rules, CC Docket 96-45.

Dear Ms. Dortch:

On February 29, 2008, Centennial USVI Operations Corp.'s ("Centennial") petition for a waiver of Section 54.314(d)(1) of the Commission's rules was posted online. Kindly consider this a supplement to that petition.

In its filing, Centennial seeks a waiver of the Commission's filing deadlines of the state certification of support for rural carriers. Simply stated, because the effective date of the USVI designation is December 2, 2006, it is not possible for Centennial or the Virgin Islands Public Services Commission ("VIPSC") to comply with the deadlines of Section 54.314(d)(1) or (6).

In reviewing the Commission's rules regarding the filing of line counts for newly designated entities, Centennial has found that a similar difficulty exists for the filing of Form 525 (line count data). Section 54.307(d) permits a newly designated entity to be eligible for support as of the effective date of its designation if it files its line count data within 60 days of the *effective date* of the designation order. Because the effective date of Centennial's order is December 2, 2006, this requirement presents a circumstance like the one created by Section 54.314 for which Centennial seeks a waiver. Centennial hereby asks that any waiver of Section 54.314 should extend to Section 54.307 as well.

Prior to the 2005 change in Section 54.307(d), Centennial had filed line counts for the Virgin Islands. However, with the rule change, Centennial stopped making those filings for the two quarters that form the basis of calculating USF support for the first and second quarters of 2007. (Centennial resumed filing when it appeared action on its petition was imminent). Consequently, with its ETC certification now granted as of December 2, 2006, Centennial will need a waiver of the rule to file the necessary line count data with USAC.

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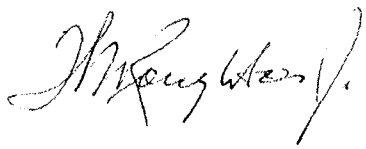
Respectfully submitted,

Centennial USVI Operations Corp



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CENTENNIAL COMMUNICATIONS

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March 26, 2008

Marlene H. Dortch
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Federal Communications Commission
445 12th Street, SW
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RE: In the Matter of Federal-State Joint Board on Universal Service - Centennial U. S. V. I. Operations Corp. Petition for Waiver of Section 54.314(d)(1) of the Commission's Rules, CC Docket 96-45.

Dear Ms. Dortch:

On February 29, 2008, Centennial USVI Operations Corp.'s ("Centennial") petition for a waiver of Section 54.314(d)(1) of the Commission's rules was posted online. On March 6, 2008, Centennial filed a supplemental letter to the petition. Kindly consider this letter a further supplement to that petition as well.

In its filing, Centennial seeks a waiver of the Commission's filing deadlines of the state certification of support for rural carriers. Simply stated, because the effective date of the USVI designation is December 2, 2006, it is not possible for Centennial or the Virgin Islands Public Services Commission ("VIPSC") to comply with the deadlines of Section 54.314(d)(1) or (6).

In making this request, Centennial sought a waiver of the earliest certification deadline (July 1, 2006) on the assumption that this would also entail the waiver of the subsequent certification deadlines (October 1, 2006 and October 1, 2007). Because there may be some question about what certification dates Centennial seeks to have waived, the company offers this clarification.

Centennial hereby makes explicit the assumption of its petition by clarifying that it seeks waivers of the July 1, 2006, October 1, 2006 and October 1, 2007 certification dates. As described more fully in its petition, grant of these waivers will permit Centennial to begin prompt construction of needed telecommunications facilities in the United States Virgin Islands.

CENTENNIAL
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William L. Roughton, Jr.

Vice President
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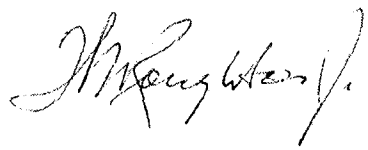
Respectfully submitted,

Centennial USVI Operations Corp



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PUERTO RICO ICLS TRUE-UP APPEAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

STAMP & RETURN

FILED/ACCEPTED
MAY 25 2007
Federal Communications Commission
Office of the Secretary

In the matter of	
Request for Review by Centennial Communications Corp. of Decision of the Universal Service Administrator	CC Docket No. 96-45 CC Docket No. 00-256

REQUEST FOR REVIEW AND,
IN THE ALTERNATIVE, REQUEST FOR WAIVER, AND REQUEST TO SUSPEND RECOVERY

Pursuant to 47 C.F.R. §§ 54.719(c) and 54.722(a), Centennial Communications Corp. ("Centennial")[1] hereby requests review and reversal of a decision of the Universal Service Administrative Company ("USAC") on March 28, 2007 regarding the "true-up" of Interstate Common Line Support ("ICLS") payments for Puerto Rico for 2004.[2] This request is timely filed within 60 days of the issuance of USAC's decision, as required by 47 C.F.R. § 54.720(a). In the alternative, Centennial requests that the Commission waive the application of the true-up rule, and related rules, to permit Centennial to retain the universal service funds it received for Puerto Rico in 2004.

I. Introduction and Summary.

This request for review arises out of USAC's application of the true-up rules applicable to the ICLS program (47 C.F.R. §§ 54.903(a)(4), (b)(3)) to the two Puerto Rico Telephone Company ("PRTC") study areas in Puerto Rico, for calendar year 2004. Based on its

[1] The specific Centennial entity certified as an eligible telecommunications carrier ("ETC"), and receiving support relevant to this appeal, is Centennial Puerto Rico Operations Corp.

[2] A copy of USAC's March 28, 2007 decision ("*USAC Decision*") is attached hereto as Exhibit 1. Centennial's principal filing with USAC below was a letter (with attachments) dated September 25, 2006, attached hereto as Exhibit 2. Centennial supplemented that original package with a letter dated March 13, 2007. That letter is attached hereto as Exhibit 3.

interpretation of the true-up rules, USAC concluded that Centennial had been overpaid by $5,381,641, out of an initial payment of $9,185,973 – a "true-up" of nearly 60%.[3] Under a proper application of those rules, however, only a very modest true-up is appropriate.[4]

The Commission's review of USAC's determination is *de novo, see* 47 C.F.R. § 54.723, so Centennial could, theoretically, simply present its views here, without regard to USAC's explanation of its actions. That said, while Centennial believes that USAC applied the ICLS and LTS rules erroneously, we recognize that USAC considered the matter in some detail and put a great deal of effort into reaching its conclusions. For this reason, we discuss not only our affirmative views regarding the proper interpretation and application of the rules, but also address USAC's approach and why we believe that approach is mistaken.[5]

USAC misapplied the ICLS true-up rule in two specific ways. The first relates to the treatment of Long Term Support ("LTS") payments during the first half of 2004. The rule calls for true-ups to be conducted once a year, but does not contemplate that the true-up calculations themselves must be based on an undifferentiated, unitary "annual" analysis. To the contrary, the rule recognizes that ICLS disbursements are made on a monthly basis, and the underlying rules

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[3] *See USAC Decision* at 22. These figures reflect USAC's agreement with Centennial that USAC had originally overstated the amount that Centennial had been paid in 2004, which led USAC to demand an even larger recoupment. *See id.* at 18-21.

[4] Centennial presented USAC with its analysis of the proper true-up amount for 2004, and believes that a relatively minor true-up relating to that year is appropriate. *See* Exhibit 2 hereto, at Attachment 1 (showing total true-up for 2004 of $110,247). However, USAC initially began recovery in August 2006, and in that month alone recovered more than the entire correct true-up amount. So, looking at the 2004 true-up in isolation, a small payment back to USAC is appropriate. Taking account of the amounts that USAC has already recovered, however, USAC should actually refund substantial amounts to Centennial. Centennial believes that it will not be difficult to reconcile the appropriate specific amounts with USAC, once the substantive issues raised in this request have been resolved.

[5] USAC had the matter under consideration for six months from the time Centennial submitted its initial detailed intra-USAC appeal in late September 2006. USAC's ultimate decision runs to 22 single-spaced pages, with nearly that much additional material in the form of charts and attachments. While we obviously disagree with USAC's conclusions in this matter, we appreciate the time, attention and courtesy with which it was handled.

for determining ICLS in the first place contemplate the use of monthly, quarterly, and annual data as appropriate. Moreover, the ICLS program operates on the basis of July 1 – June 30 funding year, so each calendar year will encompass the end of one funding year and the beginning of another. If there are significant differences in the ICLS program from one funding year to the next, true-up calculations will need to be made in a manner that reflects those differences. All of these factors affect the "relevant period" to which the details of a given year's true-up calculation must apply.[6]

USAC apparently failed to appreciate this aspect of the true-up process, and took the position that the only appropriate way to calculate a true-up is by using a unitary, annual calendar-year calculation that ignores all distinctions between different periods within a year. That was a mistake with respect to 2004, because it violates the substantive requirements of § 54.901(a) to consider the LTS payments received in the first half of 2004 – the end of ICLS funding year 2003-2004 – as relevant to ICLS payments in the second half of that year – the . beginning of ICLS funding year 2004-2005. LTS payments cannot properly be considered relevant to any period after July 1, 2004 because that is the date on which the Commission declared the LTS program to be fully and finally terminated.[7] The rules for calculating the appropriate ICLS amounts for the 2004-2005 funding year, therefore, literally prohibit consideration of any LTS amounts at all. However, USAC's approach attributes LTS revenue from the first half of 2004 to the second half, and uses that mis-attributed revenue to offset ICLS payments attributable to the second half.

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6 *See* 47 C.F.R. § 54.903(a)(4).

7 *See In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers,* Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004) ("*LTS Order*") at ¶ 67; 47 C.F.R. § 54.303(a)(1) ("Beginning July 1, 2004, no carrier shall receive Long Term Support").

It appears that USAC interpreted the true-up rule in this way out of concern that if it did not, then PRTC would over-recover its costs.[8] It is not at all clear that this is actually correct. But even if it were, enforcing the Commission's rate-of-return prescription against PRTC is not within USAC's delegated authority. *See* 47 C.F.R. § 54.702. If PRTC over-earned for 2004, whether as a result of the LTS program or any other reason, the Commission or PRTC's customers may bring an action to enforce the rate-of-return prescription. And, if the Commission were to become concerned that PRTC's universal-service-related receipts for 2004 were inflated because of an intentional effort to "game" the LTS system, it may, among other things, impose forfeitures on PRTC for a failure to be candid with the Commission.[9]

The second issue relates to the calculations that convert PRTC's LTS and ICLS revenues into per-line amounts, and then use those amounts to derive Centennial's "equal support" payments. Both the ICLS true-up rule (47 C.F.R. § 54.903(b)(4)) and the equal support rules (47 C.F.R. §§ 54.307(a) and 54.901(b)) entitle Centennial to the same per-line support that the PRTC ultimately receives for any given period. USAC, however, calculated final 2004 per-line support using line counts from prior periods.[10] As a factual matter, PRTC is shedding lines, and Centennial is gaining them. This makes the line-count error a "double-whammy." It first understates PRTC's per-line support (by dividing its 2004 costs by an artificially high, out-of-period number of lines). Then it uses this erroneously low per-line amount to an artificially reduced number of Centennial lines (lower line counts from periods before 2004). This is

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8 *See, e.g., USAC Decision* at 5 & n.33, 9, 11, 12.

9 *See In the Matter of Business Options, Inc.; Order to Show Cause and Notice of Opportunity for Hearing,* 18 FCC Rcd 6881 (2003) at ¶ 15 ("The duty of absolute truth and candor is a fundamental requirement for those appearing before the Commission").

10 Based on the *USAC Decision,* it appears that the line counts it used were lagged by approximately twelve months. *See USAC Decision* at 13 (chart) (compare column 2, "Time Frame of Reported Data" with column 5, "Affects Payments for").

completely inconsistent with the Commissions rules, which require a true-up to be based on "actual" data.

Centennial requests that the Commission correct the two errors. However, if the Commission concludes that USAC applied the rules as intended, then Centennial respectfully requests that the Commission waive the true-up and associated rules to permit Centennial to retain the universal service support payments for Puerto Rico that it actually received and spent in 2004. As noted above, the "true-up" amounts to a nearly 60% reduction in the amounts originally provided. This is not a meaningful "true-up" at all. To the contrary, an adjustment of this magnitude violates the command of 47 U.S.C. §§ 254(b)(5) and (d) that universal service funding be "predictable." Moreover, Centennial has already used the money to expand its Puerto Rico wireless network in ways that would not be economically reasonable based on purely commercial considerations. Centennial cannot "un-invest" or "un-spend" this money; as a result, the massive "true-up" is effectively a punitive action against Centennial, which reasonably relied on the approximate accuracy of the funds it was receiving from USAC. Furthermore, the unique situation in Puerto Rico – very low wireline penetration, with unusually high penetration of wireless – also supports giving special consideration to funding robust wireless ETC services there. As a result, a waiver of the true-up and associated rules is particularly appropriate in this specific situation.

Finally, Centennial requests that the Commission direct USAC to stay its recovery of the amounts USAC asserts to be due while this request for review is pending. USAC voluntarily suspended recovery while it considered Centennial's intra-USAC appeal, for which Centennial is grateful. As Centennial understands it, however, USAC does not view itself to be free to continue that suspension at this juncture. On the merits, Centennial believes that the arguments

asserted in this request are sufficiently substantial that it is fair and equitable to prevent further disruption in Centennial's cash flow – of which universal service support is a non-trivial portion – while this matter is pending.

Centennial discusses each of these points in more detail below.

II. Argument.

A. Misapplication Of The ICLS True-Up Rules.

1. Introduction.

The root cause of this dispute is the fact that PRTC significantly over-estimated its common line costs for the first six months of 2004. In the last few years of the operation of the LTS program, a carrier's LTS disbursement was based on the lower of (a) carrier-projected costs, or (b) prior year LTS amounts adjusted upward for inflation. *See* 47 C.F.R. § 54.303(b)(5)(i). PRTC's projected costs were lower than the inflation-adjusted amount, but turned out to be far above its actual costs.[11] Both Centennial and PRTC received LTS payments for the first half of 2004 – that is, the last six months of the 2003-2004 ICLS funding year – based on PRTC's projections. However, neither carrier received any ICLS revenues for that period, because the LTS payments largely covered estimated common line costs. *See* 47 C.F.R. § 54.901(a). By contrast, during the second half of 2004 – that is, the first six months of the 2004-2005 ICLS funding year – both Centennial and PRTC received ICLS disbursements – again based on PRTC's projections – but no LTS revenues (since the LTS program had terminated as of July 1, 2004).

When USAC examined PRTC's actual data, PRTC's over-estimation became evident. Based on its written ruling, it appears that USAC may have been motivated to find a way to get

[11] Using USAC's data for 2004, PRTC estimated its cost-based support requirements for 2004 as $31,928,856, when after-the-fact data showed those amounts to actually be only $13,982,571. *See USAC Decision* at 8 (chart). This is an over-estimate of more than 125%.

the money back – that is, to impose an effective true-up on the LTS payments. We emphasize that we do not question USAC's motives in this matter. In the abstract, avoiding a situation in which a rate-of-return carrier might exceed its prescribed level of earnings is surely a worthy goal. We do, however, question USAC's authority, and its application of the governing universal service rules. USAC's authority is limited to faithfully and logically applying the rules that the Commission has established for the universal service system. As described below, some of those rules act to prevent over-earnings in some situations; others do not. Where, as here, the relevant universal service rules – those applicable to the LTS program – do not include true-ups or other mechanisms to avoid over-earnings, other tools – such as the ability of the Commission or customers to enforce a rate-of-return prescription[12] – come into play. As described below, in this case USAC should have allowed the LTS payments for the first half of 2004 to stand, but referred the question of PRTC's overall earnings to the Commission for possible enforcement action.[13]

2. The LTS and ICLS Programs.

In order to understand how these issues should have been handled, it is necessary to briefly present the background and operation of the LTS and the ICLS programs. The key issue is how to handle the transition between those two programs, which occurred as of July 1, 2004.

The LTS program was established in 1987 to allow carriers participating in the NECA common line pool to maintain carrier common line rates near the national average. It was funded by payments from non-pooling carriers.[14] In 1997 the Commission modified the LTS

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12 *See, e.g., MCI Telecommunications Corp. v. FCC,* 59 F.3d 1407 (D.C. Cir. 1995).

13 If USAC's view led it to be concerned that PRTC's LTS projections reflected a lack of good faith on PRTC's part, rather than a mere over-estimation, it could have pointed that out to the Commission as well. *See generally Comprehensive Review of Universal Service Fund Management,* Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) at ¶¶ 67-99.

14 *LTS Order* at ¶¶ 55-56.

program in two ways. First, LTS would be funded by the universal service mechanisms established under newly-enacted Section 254, rather than by contributions from non-pooling carries. Second, beginning in 1998, disbursements from the LTS program would be determined based on prior year disbursements, adjusted upwards for inflation.[15]

In early 2002, at least for some carriers, inflation-based LTS payments would have resulted in significant over-earnings. NECA and USAC brought this situation to the Commission's attention and, in response, the Commission modified the LTS rules so that a carrier would receive the lesser of (a) the original, inflation-based amount, or (b) a carrier's own projected common line revenue requirement, less applicable revenues such as subscriber line charge receipts, etc.[16]

The Commission undoubtedly expected carriers to try to project their common line costs in good faith and with reasonable accuracy. The Commission did not, however, establish a true-up mechanism for LTS in the event that the projections were not entirely accurate. The projections were to establish a ***cap.*** This absence of a true-up mechanism is all the more striking given that, by the time of the *Projected LTS Order* (June 2002), the Commission had already established the ICLS program, which ***does*** contain an explicit true-up mechanism. *See* 47 C.F.R. §§ 54.903(a)(4), (b)(3). The lack of a true-up mechanism for LTS payments, therefore, cannot be viewed as an oversight or a mistake. True-ups of LTS payments were simply not part of what the Commission contemplated when it established the LTS system originally; when it modified that system in 1997; or when it further modified that system in 2002.

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[15] *Id. See also* 47 C.F.R. § 54.303(b). From 1998 to 2000 the inflation adjustment was keyed to changes in reported costs of certain carriers; from 2000 on it was keyed to a specific Department of Commerce inflation measure.

[16] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers,* Order and Second Order on Reconsideration, 17 FCC Rcd 11593 (2002) ("*Projected LTS Order*").

Meanwhile, in 2001, the Commission had established the ICLS program.[17] The purpose of the ICLS program was to eliminate the per-minute carrier common line charge, and replace the revenues from that charge with an explicit universal service support mechanism. The ICLS program became operational on July 1, 2002.

The ICLS rules contemplate the calculation of ICLS amounts, depending on the context, on monthly, quarterly, and annual bases. The basic ICLS calculation is laid out in 47 C.F.R. § 54.901. The calculations in § 54.901(a) generally refer to annual figures. However, the per-line calculations called for by § 54.901(b) plainly entail the use of ***monthly*** amounts.[18] Moreover, these monthly calculations require ILEC line counts as an input.[19] These line-count data, in turn, are submitted on a ***quarterly*** schedule.[20] In accordance with these rules, USAC calculates monthly ICLS amounts, which it then multiplies by three to generate quarterly figures.[21] As described below, this multiplicity of time periods applicable to ICLS calculations undermines any claim that one must, or even should, use a unitary annualized calculation to determine the ICLS true-up for any given year.

In any event, the Commission recognized that ICLS rendered LTS obsolete. With the elimination of the carrier common line charge, LTS – a support program designed to keep that

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17 *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers,* Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) ("*MAG Order*") at ¶¶ 120-76.

18 Specifically, the formula laid out in 47 C.F.R. § 54.901(b)(3) makes specific reference to the $2.70 amount by which ***monthly*** multi-line business maximum subscriber line charges exceed ***monthly*** residence/single-line business subscriber line charges. As a result, the required calculations must be performed using ***monthly*** data.

19 *See id.*

20 *See* 47 C.F.R. § 54.903(a)(2). This rule requires submission of line count data on the schedule laid out in 47 C.F.R. § 36.612 which, in turn, requires quarterly submission of data.

21 *See USAC Decision* at Attachment D for an illustration o the use of both quarterly and monthly figures in developing a purportedly "annual" ICLS calculation.

charge at reasonable levels – was unnecessary. As a result, in the *MAG Order,* the Commission proposed to eliminate LTS as of July 1, 2003.[22] As events developed, the Commission actually terminated LTS as of July 1, 2004. *See* 47 C.F.R. § 54.303(a)(1). In the interim, ICLS and LTS were both in effect for a two-year period, from July 1, 2002 through July 1, 2004.

To handle this overlap, the Commission defined ICLS in a way that made LTS "primary" for those carriers that were eligible to receive it. Specifically, during this period, LTS continued to be available to pooling carriers under 47 C.F.R. § 54.303. ICLS was theoretically available to these carriers as well, but ICLS amounts were expressly reduced not only by the amount of LTS a carrier ***actually*** received, but by the amount of LTS that the carrier ***would have*** received if it taken advantage of all available LTS funding. 47 C.F.R. § 54.901(a)(5). This created an overwhelming incentive for a carrier entitled to receive LTS to be sure that it actually received all the LTS to which it was entitled.[23]

As noted above, the LTS program does not contain any mechanism for truing up LTS payments to correct either over- or under-recovery of common line costs. ICLS, by contrast, expressly calls for true-ups. *See* 47 C.F.R. §§ 54.903(a)(4), (b)(3). Section 54.903(a)(4) states (emphasis added):

> Each rate-of-return carrier shall submit to the Administrator on December 31st of each year the data necessary to calculate a carrier's Interstate Common Line Support, including common line cost and revenue data, for ***the prior calendar year.*** Such data shall be used by the Administrator to make adjustments to ***monthly*** per-line Interstate Common Line Support amounts in the final two ***quarters*** of the following calendar year to the extent of any differences between the carrier's ICLS received based on projected common line cost and revenue data and the ICLS for which the carrier is ultimately eligible based on its actual common line cost and revenue data ***during the relevant period.***

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22 *MAG Order* at ¶¶ 139-41.

23 The Commission set up this incentive in order to motivate carriers participating in the NECA common line pool as of the date of the creation of the ICLS program to remain in that pool until the LTS program was terminated. *See LTS Order* at ¶¶ 62-63; *MAG Order* at ¶ 141.

The emphasized language is central to understanding USAC's error below. While the rule contemplates submission of data for "the prior calendar year," it does not state that the true-up itself must be ***calculated*** for "the prior calendar year," for "the calendar year for which the true-up is being made," or any similar language. Instead, the rule recognizes that ICLS amounts are calculated and paid on a "monthly" basis, and indicates that the true-up is to be calculated by determining the ICLS "for which the carrier is ultimately eligible ... during the relevant period" – whatever that turns out to be.

This flexibility in determining the "relevant period" makes sense, for several good reasons. First, the "funding year" for ICLS runs from July 1 through June 30.[24] As a result, any given calendar year necessarily contains two different ICLS funding years. To the extent that different regulatory or financial conditions obtain during different funding years (which in fact occurred here), that can affect the calculation of a true-up.[25]

Second, even though ICLS is calculated under § 54.901(a)(5) to reflect a carrier's entitlement to LTS revenues, LTS entitlements were not calculated on a "funding year" basis. Instead, LTS was based on calendar year cost and inflation information –information that significantly lags the two ICLS funding years spanned by the affected LTS calendar year. *See* 47 C.F.R. § 54.303. As a result, LTS amounts will never exactly correspond to ICLS funding years.

Third, by requiring true-ups to be calculated on the basis of a "relevant period" rather than a calendar year, the Commission ensured that USAC had the flexibility to calculate true-ups

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[24] *See* 47 C.F.R. § 54.903(a)(3) (stating, *inter alia,* that "the funding year [for ICLS] shall be July 1st of the current year through June 30th of the next year").

[25] In this regard, precisely because ICLS began in the middle of a calendar year, it was necessary to make a number of adjustments and assumptions to properly assign costs to that initial six-month period in calculating ICLS support. *See* Letter from C. Mattey (Wireline Competition Bureau) to I. Flannery (USAC), dated March 2, 2004 ("*Mattey Letter*"). In that letter, the Bureau confirmed that when relevant revenues relate only to half of a year, spreading them across the entire year "would not provide an accurate calculation of the final ICLS amount that carriers require to meet their common line revenue requirements.

that reflected meaningful changes in actual data that occur in, and apply to, periods shorter than a calendar year. In this regard, the most obvious data that will change over the course of a year is carrier line counts. In fact, USAC calculates both current-period and trued-up ICLS payments not on an annual basis, but instead on a ***quarterly*** basis – based in part on ***monthly*** figures – in order to take account of changing line counts and interim distribution adjustments. *See, e.g., USAC Decision* at Attachment D (showing quarterly "actual" ICLS amounts based on quarterly line counts).[26] As a result, the "relevant period" for purposes of a true-up might turn out to be an entire year, but could well be a month or a quarter, depending on the particular circumstances.

3. Application Of The True-Up Rule To 2004.

The ICLS funding year runs from July 1 of one calendar year to June 30 of the following calendar year. 47 C.F.R. § 54.903(a)(3). July 1, 2004, therefore, represented the beginning of a new ICLS funding year. By contrast, LTS funding was provided on a calendar year basis. *See* 47 C.F.R. § 54.303, *passim* (defining LTS amounts for calendar years). Also, as noted above, the Commission declared that the LTS program would completely terminate as of June 30, 2004. As a result, effective with the July 1, 2004 ICLS funding year, there would be no further interplay between the LTS program and the ICLS program.

It made sense for the Commission to terminate the LTS program as of June 30, 2004, in light of the way ICLS is calculated. Under 47 C.F.R. § 54.901(a)(5), any LTS for which a carrier is eligible during a particular ICLS funding year is counted as an offset against the ICLS "revenue requirement" for that year. By terminating LTS as of June 30, 2004, the Commission ensured that the 2004-2005 ICLS funding year would be "clean." That is, the amount of LTS to

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[26] As described below, USAC used the ***wrong*** line counts for this purpose. But USAC was perfectly correct to make separate quarterly calculations to reflect changing conditions in each quarter.

which a carrier was entitled for the July 1, 2004 ICLS funding year would necessarily be zero, thereby simplifying ICLS calculations for that funding year.

Given the termination of LTS as of June 30, 2004, it would have been a plain error – indeed, a violation of § 54.901(a) – for any carrier to have included any LTS amounts as an offset when calculating projected ICLS entitlement for the 2004-2005 funding year.

The purpose of the ICLS true-up rule is not to modify the substantive requirements of the ICLS funding formula. To the contrary, it is simply to reconcile the amount of ICLS a carrier actually received based on projected data for the funding year, with the amount it turns out to have been "ultimately ***eligible***" to receive, based on the actual data, available after the fact. 47 C.F.R. §§ 54.903(a)(4), (b)(3). Because true-ups are calculated once each calendar year, any given true-up analysis will necessarily cover two different ICLS funding years. As a result, if there are changes in relevant conditions between the two consecutive ICLS funding years embraced by a single calendar year, those changes will affect the amount of ICLS for which a carrier is "ultimately eligible" in each funding year differently. In that case, it will be necessary to make separate true-up calculations for the two funding years embraced by a single calendar year, in order to accurately reflect the ICLS for which a carrier was "ultimately eligible" during that calendar year. Failing to do this will result in a retroactive miscalculation of the amount of ICLS to which a carrier was entitled, resulting in a substantive violation of § 54.901(a).

That is exactly what happened in our case for calendar year 2004, which embraced the 2003-2004 and 2004-2005 ICLS funding years. During the 2003-2004 ICLS funding year – which included the first half of 2004 – the LTS program was operational, and § 54.901(a)(5) required deduction of any LTS to which PRTC was eligible from the amount of ICLS otherwise due. However, during the 2004-2005 ICLS funding year – which included the second half of

2004 – the LTS program was gone, so the calculation of the amount of ICLS to which PRTC was entitled literally could not be affected by LTS amounts from the first half of the year. Any effort to take those amounts into account when projecting ICLS for the 2004-2005 ICLS funding year would have been a violation of § 54.901(a).

In this regard, it is significant that the amount of ICLS to which a carrier is entitled is not affected by how much LTS the carrier might ***receive.*** Instead, § 54.901(a)(5) clearly and intentionally adjusts ICLS entitlements downwards based on the amount of LTS for which a carrier is ***eligible***.[27] Since, as a matter of law, no carrier was "eligible" for any LTS whatsoever for any period after June 30, 2004, it is flatly inconsistent with the rules to adjust ICLS downward for the 2004-2005 funding year based on any LTS amounts whatsoever.

From this perspective, it is easy to see where USAC's analysis went astray. USAC apparently believed that the "relevant period" for purposes of calculating the ICLS true-up for 2004 was necessarily the entire 2004 calendar year, viewed as an integrated whole.[28] But the true-up rule does not change the underlying fact that as a substantive matter of the calculation of ICLS entitlement, the ICLS program runs on a July 1 – June 30 funding year. *See* § 54.903(a)(3). Nor does it change the fact that ICLS in any given funding year is offset by LTS for which the carrier was eligible ***in that year.*** *See* § 54.901(a)(5). As a result, it was inconsistent with the substantive rules governing the calculation of PRTC's ICLS to offset its ICLS amounts for the 2004-2005 funding year (that is, the second half of 2004) with LTS amounts that only existed during the 2003-2004 funding year (that is, the first half of 2004).

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[27] The only carriers eligible to receive LTS at all were carriers that participated in the NECA common line pool. As noted above, the Commission established the rule reducing ICLS entitlements based on the amount of LTS for which a carrier was "eligible," instead of amounts actually received, in order to provide a strong financial incentive for pooling carriers to remain in the pool until the termination of the LTS program. *See LTS Order* at ¶¶ 62-63; *MAG Order* at ¶ 141.

[28] *See USAC Decision* at 5, 8.

Unfortunately, that is what USAC did – its approach offsets ***2004-2005 program year*** ICLS amounts with LTS from the ***2003-2004 program year.*** This directly violates § 54.901(a)(5).[29]

Recognizing that the Commission's review of this matter is *de novo,* it is nonetheless significant that USAC offers no substantive explanation, based on the language or purpose of the ICLS rules, as to why its integrated calendar year true-up calculation is required, or even appropriate. Instead, USAC simply equates the "relevant period" under § 54.903(a)(4) with a calendar year 2004, as though the supposed equivalence of the two were obvious and required no explanation. *See USAC Decision* at 5, 8. In fact, for the reasons discussed above, the "relevant period" for making true-up calculations may or may not correspond to a single, unified calendar year, depending on the circumstances.

Attributing first-half-2004 LTS amounts to the second half of 2004 is not only inconsistent with the ICLS rules; it is also inconsistent with the Commission's rules regarding LTS itself. Specifically, LTS revenues ceased – both in fact and as a matter of law – as of July 1, 2004. This abrupt end to LTS revenues occurred because, in the *LTS Order,* the Commission directly ordered that result:

> In order to effectuate this decision, we amend our rules to provide that ***LTS shall not be provided to any carrier beginning July 1, 2004.*** We note that overall support ***will not be reduced*** because our existing rules will operate to ***automatically increase ICLS by an amount to match any LTS reduction.*** For that reason, no further action by the Commission is necessary to implement the merger of LTS into ICLS.

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[29] The logical implication of lowering ICLS payments in the second half of 2004 – that is, for ICLS funding year 2004-2005 – on the basis of LTS received in the first half of 2004 is that when PRTC was projecting its ICLS amounts for funding year 2004-2005, it should have reduced those amounts by some portion of the LTS payments that it was entitled to receive from January through June of 2004 – that is, during ***ICLS funding year 2003-2004.*** That, obviously, would have been impermissible under § 54.901(a)(5), since PRTC was "eligible" for exactly zero LTS payments for ICLS funding year 2004-2005. USAC's approach to the true-up rule, therefore, has the effect of requiring a retroactive violation of § 54.901(a)(5), or, at a minimum, applying a different interpretation of the rule retrospectively than the rule would permit initially. This is inconsistent with the notion of a "true up" calculation.

LTS Order at ¶ 67 (emphasis added).

By ruling that no LTS shall exist beginning July 1, 2004, this order clearly draws a line in the sand between the first two quarters of 2004 and the second two quarters of that year. LTS revenue existed to offset any ICLS revenue requirement during the first two quarters. LTS revenue did not exist during the second two quarters. Given PRTC's 2004 level of projected common line costs for LTS purposes, the LTS revenue it received offset any potential ICLS revenue during the first two quarters. *See* 47 C.F.R. § 54.901(a)(5). On the other hand, since PRTC did not project or receive any LTS revenues in the second half of 2004, there was no offset to ICLS revenue requirement during the second two quarters.

In this regard, the emphasized language in the second sentence of the quotation above is directly relevant. That language makes clear that the phase-out of LTS should normally occur in such a way that the loss of LTS payments as of July 1, 2004, will result in a dollar-for-dollar increase in ICLS payments. That can only be accomplished if the LTS payments are treated as confined to the first half of 2004. Attributing LTS revenues from before the LTS "drop-dead" date to the period after that date – which USAC did – necessarily, dollar-for-dollar, ***prevents*** the "automatic increase" in ICLS that the Commission contemplated.

Simple fealty to the Commission's rules about when to terminate the LTS program compels the conclusion that the ICLS true-up for 2004 must treat these two very different periods as separately "relevant" under 47 C.F.R. § 54.903(a)(4).

As we explained to USAC below, a March 2004 letter from the Wireline Competition Bureau to USAC relating to the ICLS true-up applicable to 2002 (the year ICLS first took effect) confirms that stopping LTS as of July 1, 2004, is the correct way to apply the true-up. Just as LTS ***ended*** on July 1, 2004, ICLS ***began*** on July 1, 2002. The Commission had specified that

for these purposes, carrier costs relevant to ICLS should be split 50-50 between the first and second halves of that year. Even so, an issue remained because, with the various changes in access charges and universal-service related payments that also took effect that year, the 2002 revenues relevant to ICLS were "lumpy" in nature. This meant that simply taking half the yearly revenues and attributing them to the second half of the year would produce inaccurate results. In these circumstances, the Bureau directed that USAC use data from NECA to determine reasonable industry-wide factors for allocating revenues to the first versus second halves of 2002, and to use the appropriate second-half figures – not spread-out "actual" annual figures – to calculate the 2002 true up. As the Bureau succinctly noted, simply spreading 2002 revenues across the entire year "would not provide an accurate calculation of the final ICLS amount that carriers require to meet their common line revenue requirements." *See Mattey Letter, supra.*

The same sound reasoning applies here. First, ICLS true-up calculations should avoid a methodology that "would not provide an accurate calculation." Second, when a relevant event takes effect at mid-year, it is necessary to make half-year calculations to accurately determine true-up amounts.[30]

As noted above, 47 C.F.R. § 54.903(a)(4) does not require that the cost and revenue items used in calculating a true-up must be annual amounts, applied unthinkingly to a unitary annual calculation. To the contrary, the rule recognizes that relevant ICLS calculations involve monthly

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[30] In this regard, an order issued in March 2007 confirms this understanding of the applicable rules. Puerto Rico regulators had asked the Commission to clarify the application of 47 C.F.R. §54.311, as opposed to § 54.315, in light of the 2004 transition from LTS to ICLS. The Wireline Competition Bureau stated that, "***Effective July 1, 2004, the Commission*** consolidated LTS into Interstate Common Line Support (ICLS) and ***eliminated LTS as a distinct mechanism.***" *Federal-State Joint Board on Universal Service Telecommunications Regulatory Board of Puerto Rico Petition for Clarification, or in the Alternative, Waiver of Section 54.311(b) of the Commission's Rules,* Order, CC Docket No. 96-45, DA 07-1235 (rel. March 13, 2007) at ¶ 2 (emphasis added, footnote omitted). This confirms the elimination of LTS as of July 1, 2004. It follows that USAC's true-up calculation, which mathematically attributes substantial amounts of LTS revenue prior to that date to the second half of calendar year 2004, is wrong. USAC's decision acknowledged this ruling, *see USAC Decision* at 11, but did not accept its implications.

and quarterly amounts as well, so that a period other than an entire year will be appropriate in some cases. The radical shift in funding mechanisms as of mid-year 2004 – that is, the total elimination of LTS funding – necessarily requires treating the first and second half of 2004 as separate "relevant periods" in calculating the true-up. Centennial submits that it flatly violates § 54.903(a)(4) to try to determine the "ICLS for which [Centennial] is ultimately eligible" in 2004 using a calculation that attributes any LTS revenue to the second half of 2004. For LTS revenue, the second half of 2004 is not, and by law cannot be, a "relevant period."

The true-up rule requires a reasoned consideration of what period is "relevant" based on the circumstances of each year. It may well be that for some years (such as 2003, or 2005), the "relevant period" for cost and revenue purposes is, indeed, the entire calendar year, because no significant cost or revenue changes occurred mid-year. On the other hand, for other years (such as 2002, when the ICLS program began mid-year, or 2004, when the LTS program ended mid-year), the "relevant period" cannot possibly be an entire calendar year. Moreover, as noted above, USAC ***never*** calculates ICLS on a purely calendar year basis. To the contrary, because ICLS is determined on a per-line basis, and line counts are updated quarterly, USAC always makes ***quarterly*** calculations of both projected and retroactive (trued-up) ICLS amounts. Given that USAC (properly) makes quarterly calculations in any case, Centennial submits that it is unreasonable to treat revenues that ***as a matter of law*** are attributable only to the first two quarters of 2004 as, in fact, attributable to the entire year.

In this regard, the *MAG Order* clearly contemplates ***quarterly*** calculations based on changes in line counts. That order states, at paragraph 149 (emphasis added):

> [A] competitive eligible telecommunications carrier's per-line support amounts will be based on the incumbent carrier's then-current total support levels, lines, disaggregated support relationships, and customer classes. Finally, the per-line support amounts available to a competitive eligible telecommunications carrier

for each zone ***will be recalculated whenever an incumbent's total annual support or line counts, as indicated by its filings,*** have changed.

This shows that both ongoing ICLS support amounts, as well as true-ups, should be calculated on a quarterly basis to conform to quarterly updates in both ILEC and competitive ETC line counts. Given that USAC will necessarily be re-calculating ICLS payments on a quarterly basis in order to reflect line count changes, there is no basis for its claim that true-up calculations should, or must, be made on an integrated, full-year basis.

For all these reasons, it is an error – and amounts to a substantive violation of § 54.901(a) – to calculate trued-up 2004 amounts by spreading out PRTC's LTS revenues from the first two quarters of 2004 over the complete year. Not only is such a "yearly" calculation not required by ICLS rules, it is inconsistent with those rules because it fails to distinguish between the two very different "relevant periods" that occurred in 2004. Moreover, it is inconsistent with the longstanding (and correct) practice of calculating ICLS – both on a current and trued-up basis – for each calendar quarter of each year, to reflect quarterly changes in line counts.[31]

4. USAC's Error Appears To Have Been Motivated By Concerns Which May Be Legitimate As A Policy Matter But Which Are Not Properly Effectuated Via The Universal Service Process.

Based on the text of its March 28 decision, USAC developed its interpretation of the true-up rule in order to effectuate a policy of preventing PRTC from receiving revenues that would

[31] Centennial has been unable to estimate the potential overall impact of correcting USAC's calculation of true-ups for 2004 as described above, assuming *arguendo* that this result would to all study areas. If the Commission views an estimate of that impact to be a significant matter, Centennial will attempt to obtain the data from USAC necessary to make such an estimate. However, Centennial submits that there is no legal requirement to extend any correction of USAC's calculation of the 2004 true-up applicable to Centennial to any other carrier. By making its true-up determination for Centennial, USAC applied the Commission's rules to Centennial's specific situation. In administrative law terms, this is an "adjudication" that affected Centennial's specific rights. If other affected carriers have chosen not to exercise their rights to appeal specific adjudications as to them for the periods in question, that constitutes, in effect, a waiver of any claim they might have to correct these errors. Consequently, there is no reason to believe that correcting them with regard to Centennial would have any general or wide-reaching impact on the total universal service fund.

lead it to exceed its authorized rate of return.[32] Since PRTC's data for 2004 showed that its actual common line costs were below the projected costs on which the first-half LTS payments had been based, USAC concluded that letting PRTC retain those payments would result in over-earnings. Spreading first-half 2004 LTS payments over the entire year allows more ICLS revenues to be offset by the portion of those earlier LTS payments that exceeded PRTC's actual common line costs for the earlier period, thus lowering PRTC's earnings.[33]

Centennial does not dispute that in the abstract, public policy frowns on allowing a rate of return carrier to earn more than its prescribed return. However, that does not justify distorting the operation of universal service programs to achieve that result. This is so for many reasons, of which three are particularly relevant here. First, because universal service is available to rate-of-return ILECs and competitive ETCs alike, using the universal service rules to enforce rate-of-return prescriptions can create severe "collateral damage" for competitive ETCs, which is what happened to Centennial here.

Second, although enforcing rate-of-return prescriptions informs some universal service rules, it does not inform others.[34] As a result, making over-earnings a touchstone for interpreting universal service rules in general will inevitably distort the operation of some of those rules.

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[32] Its March 28 decision is replete with references to the supposed need to apply universal service rules so as to prevent PRTC from over-earning. *See, e.g., id.* at 5, 9, 11, 12.

[33] The Commission made clear in 2002 that there would never be any "negative ICLS" amounts. *See LTS Projection Order* at ¶ 7 n.22, ¶ 8. As a result, to the extent that the calculation required by § 54.901(a) (common line revenue requirements minus various offsets, including LTS) results in a negative number, that simply means that the affected carrier will receive no ILCS at all for the period in question. The mathematical effect of USAC's whole-year true-up calculation was to increase the total "base" of common line costs from which the expected LTS payments would be subtracted, leading to a low, but positive, ICLS amount for the year as a whole. This calculation, therefore, had the effect of nullifying the ban on "negative ICLS" for the first half of 2004.

[34] For example, with respect to ICLS payments, the true-up rule in 47 C.F.R. § 54.903(a)(4) ensures that ICLS payments, after true-up, do not exceed the common line costs that those payments are intended to recover. On the other hand, with regard to LTS, the Commission's decision to cap payments at the lower of the traditional inflation-adjusted amount and projections of costs, *see* 47 C.F.R. § 54.303(b)(5),

Third, there are separate regulatory mechanisms, not within the purview of universal service programs, for dealing with over-earnings by rate-of-return carriers. As the Commission noted when it modified the LTS program in 2002, rate of return carriers are subject to a ***prescribed*** earnings level: "Rate-of-return carriers ... are ***limited*** to recovery of their costs plus ***a prescribed rate of return.***"[35] Long-standing Commission and court precedent establishes that if a carrier violates a rate of return prescription by earning too much, the carrier can be required, in a case brought by the Commission or an affected customer, to disgorge the excessive earnings in the form of refunds.[36] As a result, if it turns out that PRTC's LTS payments for 2004 caused PRTC to exceed its authorized rate of return, existing Commission rules and applicable precedent establish a clear and direct way to correct that situation. There was, therefore, no need to interpret the ***ICLS*** true-up rules in a manner that prevents over-earnings based on ***LTS*** payments (which, as noted above, are not subject to true-up).

In other words, while it is hard to quarrel, in the abstract, with a desire to prevent PRTC from over-earning, that is not what the LTS or ICLS rules contemplate. Other mechanisms exist to correct that problem.

In fact, interpreting the ICLS rules to allow for a true-up of PRTC's "excess" LTS revenue creates a situation in which USAC's core mission – administration of universal service –

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will tend to minimize over-earnings attributable to LTS revenues, as long as carriers do not significantly over-estimate their costs, but – since there is no LTS true-up mechanism – if a carrier does so, the LTS program does not have a mechanism to correct that situation. As another example, also with regard to LTS, prior to the imposition of the cap just described, carriers would receive their inflation-adjusted LTS payments without regard to actual costs. In this regard, the entire purpose of price cap regulation is to de-couple carrier rates and earnings; price cap regulation, in other words, inherently tolerates a certain degree of over-earning by carriers subject to it.

35 *Projected LTS Order* at ¶ 10.

36 *See, e.g., MCI Telecommunications Corp. v. FCC,* 59 F.3d 1407 (D.C. Cir. 1995). *Cf. Projected LTS Order* at ¶ 10 ("If NECA files a tariff that on its face permits excessive recovery, any ratepayer—end users or interexchange carriers subject to CCL charges—could request that the Commission suspend the tariff to prevent over-recovery").

is compromised. As discussed below in connection with Centennial's alternative request for a waiver, Section 254 – on which the entire modern universal service program is based – specifically requires that universal service distributions be "predictable." The practical impact of USAC's interpretation of the true-up rules is to make Centennial's universal service support for 2004 utterly ***unpredictable*** by implementing a "true-up" that retroactively reduces support by almost 60%.

5. Conclusion.

For the reasons set out above, the Commission should reverse USAC's calculation of Centennial's ICLS true-up for 2004. The first and second halves of 2004 constitute separate "relevant periods" for purposes of calculating the ICLS true-up. Moreover, the Commission has commanded that no LTS revenues are to be provided after July 1 of 2004. Furthermore, USAC's own, normal calculations of ICLS revenue – including both current and true-up amounts – involve both monthly and quarterly, as well as annual, calculations. Finally, to the extent that a straightforward and proper application of the ICLS and LTS rules might lead to a situation in which PRTC exceeds its authorized return, that problem can be directly addressed by other means.[37]

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[37] Centennial provided USAC with the proper calculation of ICLS for 2004. Specifically, Centennial used 50% of the non-LTS amounts used by USAC in its initial own calculations to create two half-year figures for each of the two affected PRTC study areas. We then attributed the actual LTS amounts PRTC received for each study area (again, from the data USAC provided) to the first half of the year. This results in no ICLS at all during the first half of the year, but substantial ICLS amounts for the second half. These calculations are shown in the attachment to Centennial's September 25, 2006 letter to USAC, which is attached hereto as Exhibit 2. Here, Centennial requests that the Commission direct USAC to recalculate Centennial's ICLS true-up amounts for 2004 based on the basic methodology contained in Centennial's submission to USAC, *i.e.,* calculating true-up amounts separately for the first and second halves of the year.

B. It Is Improper To Use Prior-Period Line Counts In Calculating True-Ups Supposedly Based On "Actual" Data.

A competitive ETC such as Centennial is entitled to receive support equivalent, on a per-line basis, to the support received by the incumbent ETC. 47 C.F.R. § 54.307(a). Because Centennial does not use PRTC unbundled elements or resold services, it is entitled to "the full amount of universal service support that the incumbent LEC would have received for that customer." 47 C.F.R. § 54.307(a)(3). This amount is initially calculated in accordance with 47 C.F.R. § 54.901(b)(2), which calls for the division of the ILEC's projected ICLS revenues by "its total lines served." And the ICLS true-up rule calls for an adjustment of the initial ICLS payments based on actual data. 47 C.F.R. § 54.903(a)(4). USAC's true-up calculations did not conform to these requirements.

As a mathematical matter, this error has two elements: mistakenly high PRTC line counts, and mistakenly low Centennial line counts.

The first step in the calculation of per-line amounts is to determine PRTC's total ICLS entitlement. This figure is then divided by the applicable number of lines to generate PRTC per-line amounts. The number of PRTC lines is thus the denominator in a fraction (ICLS entitlement / PRTC lines), which means that if the line count is too high, the resulting quotient will be too low. In fact, PRTC has been losing lines each year for some time. USAC used PRTC 2003 line data to calculate the true-up for 2004, despite the fact that actual line count data have been available since August 2005.[38] Because PRTC had more lines in 2003 than in 2004, this lowers the per-line ICLS to which Centennial is entitled, with no impact on PRTC.

The next step in the calculation is to multiply the PRTC per-line amount just derived by Centennial lines in service. While PRTC's lines are the denominator in a fraction, Centennial's

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[38] *See* 47 C.F.R. § 36.612 (filing schedule for line count data); *USAC Decision* at 14-17.

lines are a factor in a multiplication. So, if Centennial's line count is too low, that lowers Centennial's ICLS entitlement. Here again, USAC used Centennial's 2003 line counts to calculate its ICLS entitlement for 2004.[39] But Centennial had more lines in 2004 than in 2003. As a result, using 2003 line counts lowers Centennial's 2004 ICLS entitlement.

USAC's apparent reason for using stale line counts when calculating true-ups is that it uses those line counts when projecting how much support carriers will need overall. *See USAC Decision* at 14-17. In addition, USAC relied on certain discussion in the *MAG Order* regarding how support would be distributed on a "current" basis – which is necessarily based on older data – to justify relying on stale data when doing the true-up calculations. *Id.* at 14-17, *citing MAG Order* at ¶ 171. None of these rationales justifies ignoring actual line count data in making true-up calculations.

First, § 54.307(a)(3) requires that for each customer to which a competitive ETC "provides the supported services," it "will receive the full amount of universal service support that the incumbent LEC would have received for that customer." In making true-up calculations, the amount that PRTC "would have received" in any quarter within 2004 can only be determined by dividing PRTC's ***actual*** universal service support for that quarter (that is, its trued-up total, based on its ***actual*** costs and revenues) by its actual number of customers in that quarter. Note that this rule does not refer to customers for which the competitive ETC "provid***ed*** the supported services" in some ***prior*** period. The rule's use of the present tense clearly indicates that payments should be based on the number of customers actually served.

Second, the description of the required per-line calculations in § 54.901(b) refers repeatedly to the number of "lines served" by the ILEC and by the competitive ETC. Nothing in

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[39] *See id.* at 17.

the phrasing of this rule suggests that "lines served" means anything other than lines ***actually*** served during the relevant period.

Third, as noted, § 54.903(a)(4) calls for true-ups to be calculated by comparing projected cost and revenue data with "the ICLS for which the carrier is ultimately eligible based on its ***actual*** common line cost and revenue data ***during the relevant period.***" Since the determination of the "ICLS for which [a competitive ETC] is ultimately eligible" depends on both ILEC and competitive ETC line counts, this rule's reference to "actual" data "during the relevant period" requires that true-ups be determined using actual period line counts.

Fourth, § 54.903(b)(3) directs USAC to reconcile ICLS payments based on projected data with the ICLS "for which each carrier is eligible based on ***actual data.***"

It is impossible to square these repeated references to "actual data" with the use of stale line count data to calculate its true-ups – especially when the actual line count data is, not available when making funding projections, is clearly available by the time the true-up calculations are made.

USAC also suggests that using prior period line counts is necessary so that the total ICLS amounts paid out for a particular year match the amount paid into the fund for that year. As USAC reasoned, since the assessment percentage for a given year is based on projected costs and line counts, the true-ups must be based on projected line counts as well. *USAC Decision* at 13-14. This is clearly wrong, for at least two reasons.

First, this argument is inconsistent with the specific language of the Commission's rules, noted just above, that require true-ups to be calculated on the basis of "actual' data.

Second, and more fundamental, this approach is illogical. The amount of money actually collected into the fund for any given year is determined by the application of the assessment

percentage to total, industry-wide interstate telecommunications revenue for that year. During any given year, some carriers (mainly ILECs) might experience a decline in lines, which might lead to a decline in those particular carriers' interstate revenues subject to assessment. But at the same time, other carriers (mainly CLECs) will experience an offsetting increase in lines, with an associated increase in interstate revenues. Moreover, contributors to the fund such as long distance carriers (and, more recently, VoIP providers) may well experience increases in assessable interstate revenues without regard to any traditional "line counts" that may have entered into USAC's prospective estimate of what the assessment percentage should be. In these circumstances, there is no logical reason to conclude that the total funds available for distribution to all ETCs for a particular period will be directly linked to either ILEC or CLEC line counts in any prior periods.

Third, USAC's references regarding line count data relate only to the filing schedule and the method for making projections and disbursements based on those projections. They do not address the true-up mechanism at all.

Finally, USAC suggests that using actual line count data when making true-up calculations could allow a carrier that failed to file its projected line counts when required by the rules to argue that it is nonetheless entitled to full ICLS support payments if the actual line count data are submitted by the time of a true-up. *USAC Decision* at 16. Centennial certainly had no intention of endorsing such a result in arguing that a true-up based on "actual" data should, indeed, rely on "actual" data. To the extent that there is any reason to think that a competitive ETC might attempt to game the system in the way USAC suggested, all that is necessary is for the Commission to provide guidance to USAC indicating that (in the absence of a waiver or some valid excuse approved by the Commission) a carrier that fails to make timely line count

filings needed to receive support on a current basis cannot use the true-up mechanism to obtain ICLS funding anyway.

For all these reasons, using old line counts for ICLS true-ups be reconciled with either the rules governing the ICLS program, or even with economic common sense. The Commission, therefore, should direct USAC to calculate true-ups based on actual data for the period being trued up – including, specifically, actual line count data for such periods.[40]

C. In The Alternative, Centennial Requests A Waiver Of The True-Up Rules.

If the Commission concludes that USAC properly applied the true-up rules, Centennial requests, pursuant to 47 C.F.R. § 1.3 and other applicable law, that the Commission waive 47 C.F.R. §§ 54.307(a), 54.903(a) and/or 54.903(b), to the extent necessary to allow Centennial to retain the ICLS payments it received in 2004. The Commission may grant this waiver "if good cause therefore is shown." 47 C.F.R. § 1.3. Centennial submits that such good cause exists in the circumstances presented here.

In general, waiver of a Commission rule is appropriate for "good cause."[41] The Commission may waive a rule where "particular facts would make strict compliance inconsistent with the public interest."[42] In other words, "a waiver is appropriate if special circumstances

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40 To the extent that ILECs are losing lines and competitive ETCs are gaining lines, properly calculating true-ups based on actual line counts in the year for which the true-up occurs may well, on balance, increase payments to competitive ETCs. But the reason for such an increase would be the fact that the competitive ETCs are serving a greater fraction of the market. In this regard, the most recent available information shows that an increasing number of consumers – roughly 10% of all households as of the first half of 2006 – are relying entirely on wireless service for their telephone needs. *See* Center for Disease Control, National Center for Health Statistics (S.J. Blumberg & J.V. Luke), "Wireless Substitution: Preliminary Data from the January-June 2006 National Health Interview Survey," (May 14, 2007), available at: http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf. Surely there is nothing inappropriate about increasing payments to wireless ETCs when those entities provide the sole form of telephone service for an increasing proportion of households.

41 *See Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990).

42 *Id.*; *Wait Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969).

warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule."[43]

This is the situation here. If indeed USAC properly applied the ICLS true-up rules, then in this specific case the operation of those rules is frustrating, rather than advancing, the purposes of the ICLS program and the public interest.

Specifically, a waiver is appropriate here because of the impact of PRTC's significant over-estimation of its common line costs under the LTS program. As noted above, the "true-up" here involves a retroactive reduction of nearly 60% of the amounts initially paid. Centennial submits that on its face, a "true-up" of this magnitude violates the command of 47 U.S.C. §§ 254(b)(5) and (d) that universal service payments be "predictable."

Moreover, Centennial has already used the money it received in 2004 to build out its wireless network in Puerto Rico, and in a manner that would not be economically reasonable based on purely commercial considerations.[44] Indeed, the Commission's own rules (47 C.F.R. § 54.904) require Centennial to certify that it is using the money it receives for the purposes envisioned by the universal service program. Centennial cannot "un-invest" or "un-spend" the money that was received and used in 2004.

Centennial submits that while relatively small, "ordinary course of business" true-ups to reflect differences between projected and actual amounts can reasonably be absorbed into ongoing business operations – and would not offend the statute's requirement of "predictability" – it is unfair and unreasonable to expect Centennial to absorb the massive "true-up" created by

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[43] *Request for Waiver of Section 54.611 of the Commission's Rules: Unicom, Inc.*, Order, WC Docket No. 02-60, 21 FCC Rcd 11240 (2006) at ¶ 7.

[44] This is inherent in any universal service spending on network infrastructure. If and to the extent that normal commercial considerations would justify an expenditure, that expenditure would have occurred without universal service funding. The funding, therefore, "uneconomically" either advances investment that would have occurred at some future time (with correspondingly delayed benefits to consumers) or not at all.

PRTC's over-estimation of its common line costs for 2004. A full or partial waiver of the true-up and/or equal support rules is therefore appropriate in this specific circumstance.

In this regard, the payment to Centennial of ICLS funding based on (supposedly) reasonably projected data, combined with the obligation on competitive ETCs to spend that money on supported services, creates a situation in which Centennial is forced to rely on the approximate accuracy of the ILEC's underlying projections, in making significant investment-backed business decisions. The program rules, in effect, give Centennial no choice but to act as though the amounts it receives on a current basis are approximately correct. In this case, for USAC to come back more than a year after the money is actually spent and demand recoupment of more than half the amount originally provided, amounts to a form of impermissible "taking" of Centennial's property.[45] A waiver here is appropriate, therefore, not only because the money from 2004 is already invested in Centennial's network, but also because the sheer size of the proposed recoupment, and the large proportion of the original amount provided that would be recouped, undermines the predictability of the universal service program itself.[46]

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[45] Centennial recognizes that the ICLS rules have always provided for a true-up, so that an ETC such as Centennial cannot reasonably have expected that the amounts actually disbursed in 2004 will remain unchanged for all time. Centennial's point, however, is that there are reasonable limits inherent in the nature of an after-the-fact "true-up" system. If a true-up based on PRTC's actual 2004 figures had resulted in a proposed recoupment of 3% or 5% of the amounts initially paid, Centennial submits that it would have no reason to complain. But no reasonable interpretation of an after-the-fact "true-up" mechanism would remotely suggest that originally disbursed amounts could be retroactively reduced by 60%. Centennial cannot simultaneously be expected to certify that it is using universal service funds for the purposes of the universal service program under § 54.904, yet at the same time hold enough funds in abeyance – that is, not use them – to guard against the possibility of a 50%, 60%, or perhaps even higher "true-up" of those funds two years in the future. The only logical way to interpret the true-up requirement, in light of the certification requirement, is that it creates a reasonable expectation that true-ups will be relatively minor as a proportion of the total amount initially received.

[46] In this regard, Centennial is a relatively small, publicly traded entity that receives a significant level of universal service funding. It is required to advise investors regarding material changes in its financial results. PRTC's extremely inaccurate common line cost projections – of which Centennial was completely unaware at the time – put Centennial at risk of having to make significant financial disclosures and adjustments with no meaningful advance warning, no explanation, and no basis for predicting

A waiver is also appropriate in light of the unique circumstances in Puerto Rico. As the Commission is aware, the level of landline penetration in Puerto Rico is dismal – less than 70%, the lowest in the nation.[47] As a result, providing universal service support to competitive wireless ETCs is uniquely important in Puerto Rico.[48] As far as Centennial is aware, no ILEC in any other state has created a situation akin to PRTC's – in which the ICLS true-up for 2004 (or any other year) is proportionately as large as the true-up at issue here. But even if some ILEC in some other state ***did*** over-project its common line costs to the same extent that PRTC did – leading to a similarly large true-up in that state – the importance ***to the goals of universal service*** in permitting a wireless ETC to retain ICLS amounts invested in a wireless network would not be as great anywhere other than Puerto Rico. The combination of extremely low landline penetration and a corresponding extremely high reliance on wireless service is unique to Puerto Rico.

Finally, Centennial notes that granting a one-time waiver in these circumstances would not require either that PRTC be permitted to retain the excess LTS payments that USAC believed could lead to over-recovery, or that other competitive ETCs in other jurisdictions be granted a similar waiver. As a result, the overall impact on the universal service fund of granting Centennial a waiver would be *de minimis.*

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whether future adjustments will be called for. These factors simply increase the unfairness to Centennial of dealing with USAC's proposed recoupment here.

[47] *See* Letter from Nancy Victory to Marlene Dortch dated December 12, 2006, *ex parte* presentation in CC Docket Nos. 96-45 and 05-337 (attachment at 1) (survey shows fixed line service available in only 68.7% of households).

[48] Indeed, the same *ex parte* presentation just cited indicates that ***wireless*** penetration in Puerto Rico is also roughly 68%. Clearly, wireless plays an extremely significant role in providing universal service in Puerto Rico.

D. The Commission Should Direct USAC To Suspend Recovery Of The Amounts In Dispute While This Matter Is Pending.

As noted above, Centennial requests that the Commission direct USAC to stay its recovery of the amounts USAC asserts to be due while this request for review is pending. USAC voluntarily suspended recovery while it considered Centennial's intra-USAC appeal, but as Centennial understands it, does not view itself to be free to continue that suspension at this juncture. On the merits, Centennial believes that the arguments asserted in this request are sufficiently substantial that it is fair and equitable to prevent further disruption in Centennial's cash flow – of which universal service support is a non-trivial portion – while this matter is pending.

III. Conclusion.

Centennial submits that USAC has clearly misapplied the rules governing both the LTS and ICLS programs in determining its asserted true-up for 2004. Specifically, USAC has misinterpreted the true-up rules to require that the only "relevant period" for which true-ups are calculated is the entire calendar year of 2004, even though the Commission's rules, and USAC's own practice, require calculating ICLS support on a quarterly basis (to reflect quarterly updates to line count data). In addition, USAC's approach ignores the Commission's clear directive that the LTS program terminate for all purposes effective July 1, 2004. Furthermore, USAC provides no sound justification for ignoring the rules' repeated command to calculate true-ups based on "actual" data; instead, it insists on making true-up calculations using line counts from periods prior to the one for which the true-up applies.

Even if the Commission does not conclude that USAC misapplied the relevant rules, in the unique circumstances of this case, the Commission should waive the true-up rules in light of Centennial's investment of the affected funds in its Puerto Rico network, in light of the

extraordinarily high ***percentage*** of amounts originally provided that USAC seeks to recoup, and in light of the unique importance, in Puerto Rico specifically, of providing universal service support to a robust wireless network.

Respectfully submitted,

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May 28, 2007

LOUISIANA IAS WAIVER PETITION AND SUPPLEMENT

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of Federal-State Joint Board on Universal Service Centennial Communications Corp. Petition for Waiver of Section 54.809 of the Commission's Rules	CC Docket No. 96 - 45

WAIVER – EXPEDITED ACTION REQUESTED

**CENTENNIAL COMMUNICATIONS CORP.
REQUEST FOR RELIEF OR WAIVER OF SECTION 54.809
OF THE COMMISSION'S RULES**

Centennial Communications Corp. ("Centennial"),[1] pursuant to Sections 1.3 and 1.925 of the Commission's rules,[2] respectfully requests that the Commission find that Centennial's certification filed under Section 54.809 of its rules was timely filed, or otherwise waive on an expedited basis the September 30, 2005, June 30, 2006 and June 30, 2007 filing deadlines set forth in Section 54.809 of the Commission's rules, 47 C.F.R. § 54.809. Approval of this request will allow Centennial to receive interstate access universal service support ("IAS") in the state of Louisiana beginning as of the fourth quarter of 2005.

[1] This request for a waiver is made on behalf of the following Centennial subsidiaries: Centennial Beauregard Cellular LLC, Centennial Caldwell Cellular Corp., Centennial Hammond Cellular LLC, Centennial Morehouse Cellular LLC, and Centennial Lafayette Communications LLC.
[2] *See* 47 C.F.R. §§ 1.3; 1.925.

BACKGROUND

With the help of the high cost programs, Centennial has made significant investment in rural Louisiana, including bringing telephone service to remote areas that had never had telephone service of any kind. By granting Centennial's request for retroactive payment of IAS, the company can continue to improve the reliability of its service in all areas of Louisiana. As demonstrated first by Hurricanes Katrina and Rita, and most recently by Hurricanes Gustav and Ike, network redundancy and robustness are critical factors for service in the Gulf region. With access to the IAS funds, Centennial can continue to strengthen its network and expand service throughout its markets.

Centennial was designated an eligible telecommunications carrier ("ETC") by the Louisiana Public Service Commission ("LPSC" or "Louisiana Commission"), effective January 14, 2004.[3] In its ETC designation petition, Centennial asked the LPSC to find it eligible for all high cost programs available within its service territory. Although the ETC Designation Order acknowledged Centennial's request to serve some non-rural areas and in no way implied that it was limiting the types of funding available to Centennial, the overwhelming majority of the discussion in the order surrounded the rural areas involved. Moreover, the ordering clause only characterized the areas being approved as "rural high-cost areas" in Louisiana.[4] For this reason, Centennial failed to file line counts and the supporting 54.809 certifications following its designation. These line counts and certifications would only have been due with respect to non-rural areas because only

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[3] *In Re Application for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934 for the Purposes of Receiving Federal Universal Service Support in Louisiana (On Reconsideration)*, Order No. U-27174-A (LA PSC May 21, 2004) ("ETC Designation Order"), a copy of which is provided at Attachment 1.

[4] *Id.* at Ordering clause 2.

those areas are eligible for IAS funding. When Centennial realized the oversight, it went back to the Louisiana Commission to seek clarification of the order. The LPSC agreed that the ETC Designation Order should have been clearer with respect to funding for non-rural areas and clarified this in a letter to the Commission dated December 19, 2007.[5]

Centennial has now filed retroactive line counts back to the third quarter of 2005, as is permitted under the policy of the Universal Service Administrative Company ("USAC"). Unfortunately, although USAC accepted Centennial's line counts, it refused to accept Centennial's 54.508 certification, making it impossible for Centennial to receive funding retroactive to its ETC designation date.[6] This certification is a simple form that confirms on an annual basis that the carrier will use IAS only for the provision, maintenance and upgrading of facilities and services for which the support is intended. USAC has taken the position that Centennial's certification should have been submitted as of the date its initial IAS line counts would have been due back in 2004.

Given the misunderstanding that surrounded the scope of Centennial's IAS eligibility, neither the Section 54.809 certifications nor the required line counts were filed in the customary manner. Having had its IAS eligibility subsequently clarified and having filed its line counts, Centennial now seeks to finalize the process and file the associated certifications retroactively to the third quarter of 2005 in order to receive the funding the Louisiana Commission had always intended to grant. To do this, Centennial respectfully

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[5] *Letter from Lawrence C. St. Blanc, LPSC Executive Secretary*, to Marlene H. Dortch, FCC Secretary (Dec. 19, 2007) a copy of which is provided at Attachment 2.

[6] *IAS Certification* attached to *Letter from William L. Roughton, Jr., Centennial Communications to Karen Majcher, USAC* (Feb. 4, 2008) (erroneously dated 2007; the Commission's date stamp clarifies that the letter was filed in February of 2008), a copy of which is provided at Attachment 3.

requests that the Commission find that Centennial has not missed the 54.809 certification deadline, or otherwise waive the deadlines set forth above.

REQUEST FOR RELIEF OR WAIVER

Section 54.809(c) of the Commission's rules, 47 C.F.R. § 54.809(c), provides that a carrier must file its IAS certifications "on the date that it first files its line counts pursuant to §54.802, and thereafter on June 30 of each year." In light of the fact that USAC accepted Centennial's line counts for the relevant period (filed in early 2008) as being sufficient for purposes of Section 54.802 (47 C.F.R. § 54.802), under a plain reading of Section 54.809(c), therefore, Centennial's certification would have been due at the same time—not 2004. Moreover, it is simply illogical for USAC to accept the line count data, but then not permit Centennial to certify that it will use all funding based on that data only for the purposes foreseen in the Commission's rules.

Even if the Commission disagrees with Centennial's technical reading of the rules, public policy and fairness support a waiver of the rules in this instance. Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

(i) The underlying purpose of the rule(s) would not served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[7]

Federal courts also have recognized that "a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest."[8] Accordingly, the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."[9]

The Commission established the annual certification mechanism in Section 54.809 to ensure that any funds would be properly spent. The timetable in Section 54.809 was certainly not intended to interfere with a state commission's substantive determination of the appropriate effective date of an ETC designation, or create a "gotcha" situation where the carrier can submit retroactive line counts under USAC policy but is then nevertheless denied funding because it is not permitted to promise to follow the Commission's rules. The misunderstanding in the LPSC's ETC Designation Order was an unintended oversight that the state commission has now rectified. The circumstances were such, however, that Centennial could not have met the normal certification deadline to receive IAS support. Receipt of such support is, however, was intended by the LPSC as its letter of December 19, 2007 to the Commission makes clear.

Centennial understands that the Wireline Competition Bureau may not be in a position to immediately grant a waiver for the older portions of the retroactive period without further consultation with others in the Commission. In this regard, Centennial re-

[7] 47 C. F. R. §1.925(b)(3).
[8] *Northwest Cellular Telephone Co. v. FCC,* 897 F. 2d. 1164. 1166 (D.C. Cir. 1990); *see also WAIT Radio v. FCC,* 418 F. 2d 1153, 1157 (D.C. Cir 1969), *cert. denied,* 409 U.S. 1027 (1972).
[9] *Northeast Cellular Telephone Co.,* 897 F. 2d at 1166 (citing *WAIT Radio,* 418 F. 2d at 1159).

quests that the waiver be considered in two parts: the first part seeks a waiver of the certification requirement so that Centennial is deemed eligible to receive IAS support for the first and second quarters of 2008. The second part of the waiver seeks to make Centennial eligible to receive IAS support beginning with the fourth quarter of 2005 through the last quarter of 2007.

For the foregoing reasons, granting a waiver of the certification deadline set forth in section 54.809 of the rules will allow Centennial to receive IAS support at the very least beginning first as of January 1, 2008, and hopefully back to October 1, 2005, the date on which funding would have first been available had there not been the clerical error in the granting clauses of the LPSC Designation Order. Granting this waiver would be consistent with the Commission's statutory goal of preserving and advancing universal service, and is in the public interest.

REQUEST FOR EXPEDITED TREATMENT

Centennial urgently requests expedited treatment of this waiver request. Louisiana consumers and Centennial should not be deprived of substantial universal service support as a result of imprecise drafting of the LPSC's ETC Designation Order. Denying Centennial support for retroactive IAS payments under these circumstances is contrary to the statutory goal of promoting the availability of universal service to consumers in high-cost areas.

Indeed, failure to grant a waiver in this instance would be particularly harsh given the currently pressing need for reliable emergency telecommunications infrastructure in the Gulf region. In connection with its ETC designation, Centennial has made commit-

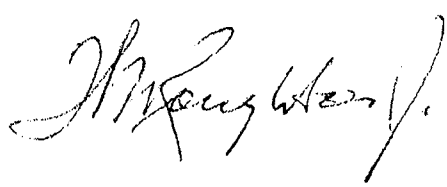
ments to extend its wireless network to poorly served and unserved areas in the state that would otherwise make no economic sense to serve. Only the receipt of universal service funds makes it viable for Centennial to undertake these improvements to extend and make improvements to its network.

CONCLUSION

For the reasons stated herein, Centennial respectfully requests that the Commission find that Centennial's February 2008 certification was timely filed under Section 54.809, or pursuant to Sections 1.3 and 1.925 of the FCC's rules, the Commission waive the Section 54.809 deadlines for the September 30, 2005, June 30, 2006 and June 30, 2007 certifications. With respect to its waiver request, Centennial seeks (1) a waiver to permit it to receive retroactive IAS funds for the first and second quarters of 2008 and (2) a further waiver to permit it to receive retroactive payments beginning October 1, 2005 through the end of 2007. In light of the unique factual setting of this request – specifically, the lack of clarity in the LPSC's designation of Centennial as an ETC– Centennial also seeks expedited consideration of its waiver request.

Respectfully submitted,

Centennial Communications Corp.



By: William L. Roughton, Jr.
Its Attorney

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Christopher W. Savage
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September 18, 2008

CENTENNIAL COMMUNICATIONS

October 28, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Supplemental Information Regarding *Centennial Communications Corp. Request for Relief or Waiver of Section 54.809 of the Commission's Rules* WC Docket No. 08-71

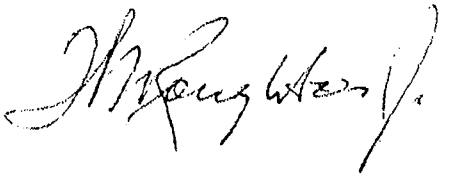
Dear Secretary Dortch:

The purpose of this letter is to provide the Commission with supplemental information in the above-captioned docket, as requested by its staff. Specifically, staff has asked Centennial Communications Corp. ("Centennial") to provide additional information for the record for the period between Centennial's designation as a competitive eligible telecommunications carrier on May 21, 2004 and the clarification letter from the Louisiana Public Service Commission ("PSC") that was issued on Dec. 19, 2007, clarifying that Centennial was eligible for funding in non-rural areas.

Centennial initially began making the requisite filings to receive funding in rural areas only, due to the poorly-worded ETC designation order. In mid-2007, however, Centennial began a comprehensive overhaul of the management of its high cost funding, including conducting a thorough audit of all high cost funding it receives in all states. It was through this audit process that it came to Centennial's attention that other competitive ETCs were receiving non-rural support in Louisiana. Centennial made further inquiries to understand why it was not receiving similar funding. Upon further review, it discovered that the lack of clarity in the designation order had led to the failure to make the proper filings to receive non-rural funding. Centennial immediately sought and obtained clarification from the PSC that it had intended to grant Centennial ETC status in the non-rural areas as requested.

Please do not hesitate to contact me should the staff require any additional information or have any further questions on Centennial's request.

Sincerely yours,



William L. Roughton Jr.
Centennial Communications Corp.

cc: Ernesto Beckford, Wireline Competition Bureau